

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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MAYOR AND BOARD OF TRUSTEES OF
THE VILLAGE OF TARRYTOWN and the
VILLAGE OF TARRYTOWN,

Petitioners,

-against-

MAYOR AND BOARD OF TRUSTEES OF
THE VILLAGE OF SLEEPY HOLLOW and
GENERAL MOTORS LLC a/k/a GENERAL
MOTORS COMPANY, LLC,

Respondents.
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VERIFIED ANSWER

Index No. 11630/11

Respondents, Mayor and Board of Trustees of the Village of Sleepy Hollow, by their attorneys, Keane & Beane, P.C., for their answer to the Amended Petition verified on June 28, 2011, respond, upon information and belief, as follows:

1. Deny the allegations set forth in Paragraphs 9, 10, 11, 12 and 13 of the Amended Petition, except what the February 22, 2005 testimony cited therein, as well as the follow-up memorandum cited therein, including a letter from Adler Consulting, dated April 4, 2005, may otherwise indicate.

2. Deny the allegations set forth in Paragraph 15 of the Amended Petition and refer the Court to the FEIS cited therein for a true and complete statement of what was proposed in the FEIS.

3. Deny the allegations set forth in Paragraphs 17 and 18 of the Amended Petition, except what the testimony of the Mayor of the Village of Tarrytown and the Village of Tarrytown's planning consultant cited therein may otherwise indicate.

4. Deny the allegations set forth in Paragraphs 19, 20, 21 and 22 of the Amended Petition, except what the memorandum from the Village of Tarrytown's planning consultant, dated January 23, 2007, may otherwise indicate.

5. Deny the allegations set forth in Paragraph 23 of the Amended Petition, except what the February 1, 2007 letter cited therein may otherwise indicate.

6. Deny the allegations set forth in Paragraph 25 of the Amended Petition, except what the comments of the Village of Tarrytown cited therein may otherwise indicate.

7. Deny the allegations set forth in Paragraph 26 of the Amended Petition, except what the July 14, 2007 memorandum cited therein may otherwise indicate.

8. Deny the allegations set forth in Paragraphs 27 and 28 of the Amended Petition, except what the July 17, 2007 letter cited therein may otherwise indicate.

9. Deny the allegations set forth in Paragraph 29 of the Amended Petition.

10. Deny the allegations set forth in Paragraph 30 of the Amended Petition, except admit that the Sleepy Hollow Board did not require the preparation of an SEIS.

11. Deny the allegations set forth in Paragraphs 31, 32, 33, 34, 35, 36, 37, 38 and 39 of the Amended Petition, except what the Findings Statement cited therein may otherwise indicate.

12. Deny the allegations set forth in Paragraphs 40, 41, 42 and 43 of the Amended Petition.

13. Deny the allegations set forth in Paragraph 44 of the Amended Petition, except admit that at some point in time, the Tarrytown Board allegedly prepared a purported Findings Statement under SEQRA.

14. Deny the allegations set forth in Paragraphs 45, 46, 47, 48, 49, 50 and 51 of the Amended Petition, except what the purported Tarrytown Findings Statement cited therein may otherwise indicate.

15. Deny the allegations set forth in Paragraphs 52 and 53 of the Amended Petition, except what the allegations set forth in the Article 78 proceeding commenced by the Village of Tarrytown and cited therein may otherwise indicate.

16. Deny the allegations set forth in Paragraph 61 of the Amended Petition, except what the December 31, 2009 Decision, Order and Judgment of the Westchester County Supreme Court cited therein may otherwise indicate.

17. Deny the allegations set forth in Paragraph 62 of the Amended Petition.

18. Deny the allegations set forth in Paragraph 64 of the Amended Petition, except what the Environmental Assessment Narrative cited therein may otherwise indicate.

19. Deny the allegations set forth in Paragraph 65 of the Amended Petition.

20. Deny the allegations set forth in Paragraphs 67, 68, 69, 70 and 71 of the Amended Petition, except what the Sleepy Hollow Supplemental Findings Statement cited therein may otherwise indicate.

21. Deny the allegations set forth in Paragraphs 73, 74, 75 and 76 of the Amended Petition, except what the letter cited therein, dated February 9, 2011, may otherwise indicate.

22. Deny the allegations set forth in Paragraphs 77, 78 and 80 of the Amended Petition, except what the purported Tarrytown Supplemental Findings Statement cited therein may otherwise indicate.

23. Deny the allegations set forth in Paragraph 79 of the Amended Petition.

24. Deny the allegations set forth in Paragraph 81 of the Amended Petition.
25. Deny the allegations set forth in Paragraph 82 of the Amended Petition, except what the Environmental Assessment Narrative referred to therein may indicate.
26. Deny the allegations set forth in Paragraph 83 of the Amended Petition, except what the Sleepy Hollow Supplemental Findings Statement referred to therein may otherwise indicate.
27. Deny the allegations set forth in Paragraphs 84, 85, 86, 87, 88 and 89 of the Amended Petition, except what the purported Tarrytown Supplemental Findings Statement referred to therein may otherwise indicate.
28. Deny the allegations set forth in Paragraphs 88, 90, 91, 92, 92, 94, 95, 96 and 97 of the Amended Petition.
29. Deny the allegations set forth in Paragraph 99 of the Amended Petition, except what counsel for Petitioner may have stated at the June 7, 2011 hearing.
30. Deny the allegations set forth in Paragraph 100 of the Amended Petition, except what the letter dated June 7, 2011 may otherwise indicate.
31. Deny the allegations set forth in Paragraph 101 of the Amended Petition, except what the resolution granting the special permit and approving the Riverfront Concept Development Plan referenced to therein may otherwise indicate.
32. Deny the allegations set forth in Paragraph 102 of the Amended Petition.
33. Deny the allegations set forth in Paragraphs 103, 104, 105, 106 and 107 of the Amended Petition, except what the special permit referred to therein may otherwise indicate.

34. Deny the allegations set forth in Paragraphs 108, 109, 110 and 111 of the Amended Petition.

35. Deny the allegations set forth in Paragraph 112 of the Amended Petition, except what the Sleepy Hollow Findings Statement referred to herein may otherwise indicate.

36. Deny the allegations set forth in Paragraph 113 and 114 of the Amended Petition.

37. Deny the allegations set forth in Paragraphs 116, 117, 118 and 119 of the Amended Petition, except what the Consistency Findings referred to therein may otherwise indicate.

38. Deny the allegations set forth in Paragraph 121 of the Amended Petition and refer the Court to the Special Permit and/or the Design Guidelines referred to therein for a complete and accurate copy thereof.

39. Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 122 of the Amended Petition.

40. Deny the allegations set forth in Paragraphs 123, 126 and 127 of the Amended Petition.

41. Deny the allegations set forth in Paragraphs 124 and 125 of the Amended Petition and refers the Court to the documents referenced therein for the full and accurate contents thereof.

42. Deny the allegations set forth in Paragraphs 129, 131, 132, 134, 135 and 136 of the Amended Petition.

43. Deny the allegations set forth in Paragraphs 137 and 138 of the Amended Petition, except what the purported Tarrytown Supplemental Findings Statement referred to therein may otherwise indicate.

44. Deny the allegations set forth in Paragraphs 139, 140, 141, 144, 145 and 147 of the Amended Petition.

45. Deny the allegations set forth in Paragraphs 148, 149 and 150 of the Amended Petition, except what the SEQRA Handbook referenced therein may otherwise indicate.

46. Deny the allegations set forth in Paragraph 151 of the Amended Petition.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 153 of the Amended Petition.

48. Deny the allegations set forth in Paragraphs 154, 155, 156 and 159 of the Amended Petition.

49. Deny the allegations set forth in Paragraph 160 of the Amended Petition, except what the Sleepy Hollow Supplemental Findings Statement referred to therein may otherwise indicate.

50. Deny the allegations set forth in Paragraphs 161, 163, 164, 165, 166, 167, 169, 170, 171 and 172 of the Amended Petition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

51. The Petition fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

52. Petitioner lacks standing to bring the instant proceeding.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

53. Petitioner has not suffered a legally cognizable injury.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

54. There is no justiciable case or controversy between the parties.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

55. At all times herein after mentioned, the Respondent Mayor and Board of Trustees of the Village of Sleepy Hollow (hereinafter “Respondent Sleepy Hollow”) constitute the elected legislative body of the Village of Sleepy Hollow and in such capacity exercise such powers that are given to the Mayor and Board of Trustees by the laws of the State of New York and the laws of the Village of Sleepy Hollow, including the Zoning Ordinance of the Village of Sleepy Hollow.

56. At all times hereafter mentioned, Respondent General Motors LLC a/k/a General Motors Company, LLC (hereinafter “Respondent GM”) is a Delaware Limited Liability Company authorized to do business in the State of New York.

57. Respondent GM is the Lessee of an approximately 96 acre site of real property located within the Village of Sleepy Hollow, New York. Said site is designated on the Village of Sleepy Hollow Tax Map as Parcels 115.10-1-1, 115.11-1-1 and 115.15-1-1 (hereinafter the “Site”).

58. The Site consists largely of land created to support industrial uses and has an extensive history dating back to the 1800’s, which includes approximately 100 years of automobile assembly manufacturing.

59. The Site was created through a series of filling operations utilizing urban fill materials, such as ash and cinders or material dredged by various entities. Said filling operations commenced in the mid-1880's and continued until the mid-1960's.

60. In 1996, Respondent GM closed the assembly plant facility located on the Site.

61. In 1996, the Governor of the State of New York created a "Task Force on the Reuse of the General Motors North Tarrytown Plant" led by the Westchester County Department of Planning, with representatives from the State and the Village of Sleepy Hollow on the Task Force. Said Task Force prepared a reuse study which broadly identified potential redevelopment options for the Site. This study highlighted potential scenarios and positive aspects that would be important to attract future development.

62. Throughout the late-1980's and 1990's, Respondent Sleepy Hollow worked on the creation of a Local Waterfront Revitalization Program ("LWRP"). Anticipating the dramatic change on the Village stemming from the closure of the General Motors plant, a major component of the LWRP was the development of a series of goals and objectives for the redevelopment of the Site.

63. The LWRP, adopted by Respondent Sleepy Hollow in November 1996 and approved by the New York State Department of State on June 5, 1997, proposed the creation of a specific zoning district that would allow for a redevelopment compatible with the balance of the Village. Respondent Sleepy Hollow then began the preparation of zoning amendments compatible with the LWRP. These amendments created a new zoning district, known as the RF- Riverfront Development District (the "RF Zoning District").

64. These zoning amendments were enacted by Respondent Sleepy Hollow in 1997. Thus, the RF Zoning District was created and specific zoning regulations were adopted outlining general parameters for development regarding building height, density, permitted uses, and design criteria. The RF Zoning District regulations contemplated a maximum development potential on the Site of approximately 1,870 residential units and approximately 400,000 square feet of commercial space.

65. The LWRP concepts were subject to broad public input within Sleepy Hollow, including a mailing to all Village residents. The LWRP and RF Zoning District amendments were subject to a thorough environmental review conducted by Board of the then Village of North Tarrytown (as Sleepy Hollow was previously known).

66. In 2002, Respondent Sleepy Hollow prepared a Waterfront Linkage Study for the following purposes: to assist the Village in better visualizing what future waterfront development would look like; to identify specific components within the Village that could be linked to the Site; and to build consensus towards a concept plan which would begin to address land use, circulation, density and aesthetics. The Waterfront Linkage Study was the product of a team made up of a wide range of participants, including private citizens, State and Village representatives, the development community and special interest and environmental organizations. The study process included multiple public workshops/presentations in which more than 170 members of the public participated.

67. The RF Zoning District regulations enumerated a number of purposes for the district, including: to promote the policies of the LWRP, including positive development and revitalization of the waterfront area, while ensuring that such revitalization takes place in a

manner sensitive to the coastal and community resources; to afford a priority to waterfront-compatible well-designed uses; to achieve public access to the coastal area; to provide standards for development in such a fashion as to create a distinct waterfront district in the spirit of an old Hudson River waterfront community image; to provide opportunities for permanent public views and visual access to the Hudson River; to protect, preserve and enhance sensitive environmental areas, prevent soil erosion, sedimentation and slope failure, to prevent the loss or diminution of public views of the Hudson River and opposite shore, and to prevent activities which will cause water and air pollution; to encourage an economic stimulus and by establishing a comprehensively planned central focus for the Village's waterfront area including land uses such as residential and waterfront commercial to serve as a catalyst for the revitalization of the entire Village core area; to encourage a mix of uses with a consistent set of design standards; to eliminate deteriorated structures and deleterious land uses; and to provide increased pedestrian access that integrates with pedestrian public access opportunities on adjacent public lands.

68. In 2002, Respondent GM advised Respondent Sleepy Hollow that it had selected Roseland Property Company of Short Hills, New Jersey as the proposed redeveloper of the Site. According to Respondent GM, Roseland Property Company had extensive experience in the redevelopment of sites that had been previously contaminated due to industrial operations in cities such as Weehawken, New Jersey and Quincy, Massachusetts.

69. On February 11, 2003, pursuant to the requirements of the RF Zoning District, a formal application for a Riverfront Development Concept Plan and special permit

was submitted by Respondent GM and Roseland/Sleepy Hollow LLC (“Roseland”), a subsidiary of Roseland Property Company, to the Respondent Sleepy Hollow. (Certified Record of Proceedings (“CROP”) at Vol.1, No.1.¹

70. The development proposed in the initial application called for a mixed-use waterfront development consisting of 1,562 residential units, 185,000 square feet of retail space, 95,000 square feet of office space, a 150-room inn, a proposed train station and associated parking and open space. The development was to be known as “Lighthouse Landing.”

71. The proposed development was subject to approvals required by the Village of Sleepy Hollow Codes and applicable state laws.

72. On February 25, 2003, the Respondent Sleepy Hollow declared its intent to be the Lead Agency for the proposed action, as required by the State Environmental Quality Review Act (“SEQRA”) of the State of New York, Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617, did cause to be circulated a Notice of Intent to Act as Lead Agency to a comprehensive list of interested and involved agencies and other members of the public concerned about this matter.

73. In order to assist in the environmental review of the Lighthouse Landing proposal, the Respondent Sleepy Hollow retained a number of independent consultants to assist in the review of technical documentation submitted in support of the application. The consultants to Respondent Sleepy Hollow included: Keane & Beane, P.C., Special Counsel;

¹ All “CROP” references are to the Certified Record of Proceedings which is being submitted to this Court along with this Verified Answer.

Saccardi & Schiff, Inc., Planning and Development Consultant; STV Incorporated, Traffic, Air, and Noise Consultant; Real Estate Solutions Group, Socioeconomic and Fiscal Consultant; Dolph Rotfeld Engineering, P.C., Civil and Utility Engineering Consultant; DMJM Harris, Stormwater and Marine Facilities Consultant; Hardesty & Hanover, Structural Engineering Consultant; Beyer Blinder Belle, Design Consultant; Richard Daley Architects, Design Consultant; and Roux Associates, Environmental Consultant.

74. On April 7, 2003, the Respondent Sleepy Hollow declared itself the Lead Agency, as mandated by SEQRA, for the coordinated review of the Lighthouse Landing project.

75. The Lighthouse Landing project subsequently was determined by Respondent Sleepy Hollow to have a potentially significant impact upon the environment and, for this reason, was made subject to the full environmental review procedures and decision-making required under SEQRA.

76. In April, 2003, the Respondent Sleepy Hollow received a draft scoping document from Roseland and circulated this draft scoping document to all known interested and involved agencies and members of the public concerned about the Lighthouse Landing proposal.

77. Respondent Sleepy Hollow held a public scoping session on May 5, 2003, at which time all members of the public were invited to attend and present their views as to the contents of the Draft Environmental Impact Statement (“DEIS”) to be prepared by Roseland. The public scoping session was continued on May 20, 2003. On May 20, 2003,

Respondent Sleepy Hollow closed the public scoping session, but allowed the submission of written comments until June 6, 2003.

78. Respondent Sleepy Hollow received 27 pieces of correspondence along with the public scoping transcripts to be considered as part of the scoping outline comment process.

79. On August 12, 2003, Respondent Sleepy Hollow discussed revisions to the proposed scoping outline, accepted the scoping outline and directed Roseland to circulate a copy of the scoping document to a list of interested and involved agencies and other members of the public concerned about the Lighthouse Landing project. CROP, Vol. 1, No. 14.

80. On April 14, 2004, Roseland submitted a preliminary DEIS to Respondent Sleepy Hollow.

81. On September 21, 2004, Respondent Sleepy Hollow adopted a resolution accepting the September 14, 2004 draft of the Sleepy Hollow Waterfront Open Space Plan as being sufficient in detail for public review and comment and as part of the forthcoming preliminary DEIS.

82. The preliminary DEIS submitted by Roseland was reviewed by Respondent Sleepy Hollow and its consultants for completeness with respect to the items identified in the adopted scoping outline.

83. Respondent Sleepy Hollow's consultants provided written reports to the Respondent Sleepy Hollow regarding the completeness of the DEIS.

84. Roseland thereafter revised the preliminary DEIS to address the items identified in the completeness reports and on November 19, 2004 submitted a redlined revised preliminary DEIS to Respondent Sleepy Hollow.

85. On December 21, 2004, Respondent Sleepy Hollow held a special work session devoted to discussing the completeness aspect of the preliminary DEIS document.

86. During its deliberations on completeness, Respondent Sleepy Hollow considered review memoranda from its consultants, including Saccardi & Schiff, Inc. (June 24, 2004 and December 20, 2004), STV Incorporated (May 7, 2004, July 23, 2004, December 20, 2004 and December 21, 2004), Real Estate Solutions Group (July 23, 2004 and December 20, 2004) and Dolph Rotfeld Engineering, P.C. (June 28, 2004 and December 20, 2004).

87. On January 7, 2005, Roseland submitted a revised DEIS, which was reviewed by Respondent Sleepy Hollow, Village staff and consultants.

88. On January 11, 2005, after careful consideration, Respondent Sleepy Hollow declared that the DEIS was complete with respect to its scope, content and adequacy as prescribed by SEQRA.

89. The DEIS was thereafter circulated to all Interested and Involved agencies. CROP, Vols. 2, 3 and 4).

90. Respondent Sleepy Hollow held a series of public meetings and hearings on the DEIS and the proposed action in order to receive public comment, including public meetings on February 8, 2005 and February 15, 2005, and public hearings on February 19,

2005 and February 22, 2005, at which time all individuals wishing to be heard were given the opportunity to present their views.

91. In order to enhance public involvement in the review of the DEIS and facilitate a “hard look” by the Respondent Sleepy Hollow at the project’s impacts, Respondent Sleepy Hollow created various subcommittees, which were composed of no more than three Village trustees, Village staff and consultants and were open to participation by members of the community. The function of the Committees was to study focused areas of concern in the DEIS, including site design, traffic, community facilities, construction and site development, environmental conditions and socioeconomics.

92. On October 4, 2005, Roseland submitted a preliminary Final Environmental Impact Statement (“FEIS”) to Respondent Sleepy Hollow, intended to respond to all substantive comments received during the DEIS comment period.

93. The proposed action presented and addressed in the preliminary FEIS by Roseland was significantly changed since the initial DEIS submission and included major modifications to the project program and plan (the “FEIS Alternative Plan”) incorporating, among others: reducing the number of residential units by 312 units to 1,250; reducing the size of the retail component from 180,000 sf to 132,000 sf, including a 25,000 sf market, 18,000 sf fine arts cinema, 84,000 sf of shops and restaurants along Beekman Place, and a 5,000 sf restaurant within the hotel; reducing the size of the office component from 50,200 sf to 35,000 sf; reducing the hotel to 140 rooms; reducing the ratio of rental residential units from 72% to 51%; increasing the open space to be provided along the riverfront and within the interior of the Site, creating an open space buffer between Kingsland Point Park and the

project; increasing the overall quantity of public open space and public use areas from between 26 to 33 acres to approximately 39 acres, which is approximately 41% of the total Site area; expanding the scope of water-dependent uses along the waterfront with a floating dock for small craft launching, widening and lengthening the waterfront access area, and providing an interpretive center/boathouse near the cove adjacent to Kingsland Point Park, a “dock and dine” dock adjacent to the proposed hotel location, and a third belvedere extending over the riprap opposite the hotel site; and increasing the extent of infrastructure improvements to be made as part of the project.

94. In order to facilitate the review of the FEIS Alternative Plan and the preliminary FEIS document, Respondent Sleepy Hollow reconstituted the various subcommittees involved in the review of the DEIS.

95. The subcommittees held a series of public meetings from October to December 2005 on focused areas of concern regarding the FEIS Alternative Plan and the preliminary FEIS, including site design, traffic, community facilities, construction and site development, environmental conditions and socioeconomics.

96. On December 20, 2005, reviews from the various Village consultants, the subcommittees, the Village Planning Board, Waterfront Advisory Committee and Architectural Review Board were collected and transmitted to Respondent Sleepy Hollow.

97. Respondent Sleepy Hollow discussed the FEIS Alternative Plan and preliminary FEIS and the comments received on the documents at its December 20, 2005, January 10, 2006, January 17, 2006 and January 24, 2006 meetings.

98. After a careful and thorough review of the FEIS Alternative Plan and preliminary FEIS document, the subcommittee reports, consultant reviews, and comments from other Boards and the public, Respondent Sleepy Hollow compiled a list of comments on the FEIS Alternative Plan and preliminary FEIS. These were transmitted from Respondent Sleepy Hollow to Roseland by correspondence dated January 31, 2006.

99. On May 3, 2006, Roseland submitted a revised preliminary FEIS document to Respondent Sleepy Hollow.

100. After review of the revised preliminary FEIS, the Respondent Sleepy Hollow determined that the revisions were not sufficiently responsive to the completeness comments provided to Roseland in January 2006, and directed Roseland to further revise the preliminary FEIS.

101. On November 7, 2006, Roseland submitted a redlined preliminary FEIS to Respondent Sleepy Hollow that had been further revised to address the completeness comments.

102. In response to further comments from Village consultants, on December 1, 2006, Roseland submitted a redlined preliminary FEIS to Respondent Sleepy Hollow.

103. Respondent Sleepy Hollow reviewed and discussed the FEIS Alternative Plan and revised preliminary FEIS at its December 5, 2006, and December 12, 2006 public meetings.

104. The preliminary FEIS document was further revised in response to comments from Respondent Sleepy Hollow and a review memorandum from Saccardi & Schiff, Inc.,

dated December 8, 2006 and redlined revisions were transmitted to Respondent Sleepy Hollow on December 15, 2006.

105. During the course of the subject environmental review, Respondent Sleepy Hollow evaluated building height as a design parameter and its relationship to the RF Zoning District regulations.

106. A proposed amendment of the Zoning Ordinance to allow for greater flexibility regarding building heights in the RF Zoning District was submitted for consideration with the Proposed Action by Roseland on December 18, 2006, to Respondent Sleepy Hollow and said zoning amendment application was subsequently amended on December 19, 2006.

107. Respondent Sleepy Hollow continued its review and discussion of the FEIS Alternative Plan and preliminary FEIS document revisions at its December 19, 2006 public meeting.

108. By letter to Respondent Sleepy Hollow dated December 19, 2006, Roseland set forth that the FEIS Alternative Plan was Roseland's proposed Riverfront Development Concept Plan for the purposes of Section 62-5.1 of the Village Zoning Code. CROP, Vol. 9, No. 3.

109. Based on the revisions to the preliminary FEIS, on December 19, 2006, Respondent Sleepy Hollow accepted the FEIS, and directed Roseland to circulate the FEIS document by December 29, 2006 to all involved and interested agencies. CROP, Vols. 5, 6, 7 and 8).

110. On December 19, 2006, Respondent Sleepy Hollow scheduled public hearings on the FEIS, the Riverfront Development Concept Plan and the Special Permit applications and the proposed zoning text amendment for January 23, 2007.

111. A copy of the accepted FEIS was made available in the Sleepy Hollow Village Clerk's office, the Public Library of the Tarrytowns, and on a publicly-accessible Internet website.

112. On January 10, 2007, Roseland appeared before the Village of Sleepy Hollow Waterfront Advisory Commission ("WAC") for a consistency review with respect to the goals and policies detailed in the Village's LWRP.

113. At its January 10, 2007 meeting, the WAC, after due consideration and discussion, made a recommendation to the Respondent Sleepy Hollow that the FEIS Alternative Plan was consistent with the goals and objectives contained in the Village's LWRP, subject to several conditions, including the condition that the WAC be consulted during development of the design for the waterfront open space.

114. On January 18, 2007, Roseland appeared before Respondent Sleepy Hollow. At this time, the FEIS and proposed zoning text amendment was discussed.

115. Although not a requirement under SEQRA, the Respondent Sleepy Hollow on January 23, 2007 held a duly noticed public hearing on the FEIS and concurrent public hearings on the Riverfront Development Concept Plan and Special Permit applications and the proposed zoning text amendment, at which time all those wishing to be heard were given the opportunity to present their views. CROP, Vol. 9, No. 13.

116. The Respondent Sleepy Hollow closed the public hearing on the FEIS on January 23, 2007 and received public comments on the accepted FEIS until the close of business on Friday, February 2, 2007, including comments from the Village of Sleepy Hollow Planning Board and the neighboring Village of Tarrytown.

117. Respondent Sleepy Hollow was provided with copies of all correspondence submitted on the FEIS during the public comment period, a copy of the January 23, 2007 public hearing transcript, and two separate memoranda from Saccardi & Schiff, Inc. dated February 16, 2007 and February 22, 2007 summarizing all of the comments submitted to the Village and how they would be addressed. CROP, Vol. 9, No. 13.

118. The Respondent Sleepy Hollow requested that various consultants to the Village prepare additional material for consideration relative to specific technical issues raised during the course of the comment period on the FEIS, which included an STV, Inc. memorandum dated June 26, 2007, a Real Estate Solutions Group memorandum dated June 20, 2007, Roux Associates commentary, and DMJM-Harris letters dated April 25, 2007, July 10, 2007, and July 16, 2007.

119. On February 13, February 20, February 27, May 1, May 8, May 15, June 12, June 19, and June 26, July 10, July 17, and July 24, 2007, Respondent Sleepy Hollow held public meetings to review and discuss comments raised during the FEIS comment period and issues to be addressed in the Environmental Findings Statement, including the reasonableness of lower density alternatives and the traffic impacts on the Village of Tarrytown.

120. On July 24, 2007, the Respondent Sleepy Hollow adopted the “Findings Statement under the State Environmental Quality Review Act for Lighthouse Landing at Sleepy Hollow”. CROP, Vol. 9, No. 31.

121. As set forth above, between February 11, 2003 and July 24, 2007, the Respondent Sleepy Hollow held in excess of 50 public meetings, hearings or subcommittee meetings to discuss and consider the proposed action which was described in the Environmental Findings Statement.

122. In preparing the Environmental Findings Statement, Respondent Sleepy Hollow reviewed and considered the DEIS, the FEIS, the LWRP, consultant reports, plans, and studies and public and government agency comments.

123. The Environmental Findings Statement adopted by Respondent Sleepy Hollow on July 24, 2007 is both procedurally and substantively lawful and proper in all respects.

124. The 135 page Environmental Findings Statement adopted by Respondent Sleepy Hollow has a rational basis, is not arbitrary or capricious and is lawful and proper.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

125. Respondent Sleepy Hollow repeats and realleges the allegations set forth in Paragraph 55 to 124 of its Answer to the Amended Petition.

126. At all times hereinafter mentioned, Petitioner Mayor and Board of Trustees of the Village of Tarrytown constitute the duly elected legislative body of the Village of Tarrytown and Petitioner Village of Tarrytown is a municipal corporation in the State of

New York exercising such powers that have been granted to it by the Legislature of the State of New York and laws of the Village of Tarrytown (hereinafter “Petitioner Tarrytown”).

127. A portion of the Village of Tarrytown boundary is contiguous to the Village of Sleepy Hollow and the Village is located south of the Village of Sleepy Hollow. No portion of the site owned by Respondent GM abuts the Village of Tarrytown and the closest location of the GM site to the Village of Tarrytown is approximately 450 feet away.

128. From the time Respondent GM and Roseland filed their initial application with the Respondent Sleepy Hollow on February 11, 2003, and up to and including the time that the Respondent Sleepy Hollow issued its Findings Statement on the Lighthouse Landing project on July 24, 2007, Petitioner Tarrytown attended public meetings, made presentations at public hearings, submitted public comments and otherwise fully participated in the entire SEQRA process. At all times the Respondent Sleepy Hollow went out of its way to insure that the legitimate concerns of Petitioner Tarrytown and its residents, especially concerns related to traffic, were addressed.

129. The alternative plan and the traffic mitigation measures set forth in the June 24, 2007 Findings Statement are in large part the result of comments and concerns raised by Petitioner Tarrytown and the content of the Findings Statement fully demonstrate that the Respondent Sleepy Hollow took a hard look at the concerns of Petitioner Tarrytown and adequately addressed these concerns in the Findings Statement issued on July 24, 2007. *See* CROP, Vol. 9, No. 31.

130. A review of the conditions set forth in the July 24, 2007 Findings Statement issued by Respondent Sleepy Hollow demonstrates that contrary to the allegations set forth

by Petitioner Tarrytown, Respondent Sleepy Hollow adequately addressed the traffic concerns of Petitioner Tarrytown and set forth appropriate traffic mitigation measures.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

131. Respondent Sleepy Hollow repeats and realleges the allegations set forth in Paragraph 55 to 130 of its Answer to the Amended Petition.

132. Subsequent to the issuance of the June 24, 2007 Finding Statement, Roseland terminated its Development Agreement with a GM and advised Respondent Sleepy Hollow that it would no longer be the proposed developer for the project.

133. Thereafter, litigation was commenced by Petitioner Tarrytown against Respondents Sleepy Hollow and GM challenging the July 24, 2007 Findings Statement. In *Mayor and Board of Trustees of the Village of Tarrytown, et al. v. Mayor and Board of Trustees of the Village of Sleepy Hollow, et al.*, (West. Cty. Index No. 21358/07), Petitioner Tarrytown challenged the July 24, 2007 Findings Statement on the basis that Respondent Sleepy Hollow allegedly failed to take a hard look at the traffic impacts of the proposed Roseland/GM development on the Village of Tarrytown and refused to reduce the density of the proposed project in conformity with Petitioner Tarrytown's wishes. *See* Exhibit C to Amended Petition.

134. On November 13, 2007, Petitioner Tarrytown and Respondents Sleepy Hollow and GM entered into a Stipulation wherein it was agreed to by the parties that the litigation challenging the July 24, 2007 Findings Statement would be placed on "hold" until such time as Respondent Sleepy Hollow issued a site plan and/or special permit approval to Respondent GM. The Stipulation indicated that Petitioner Tarrytown would have a

specified period of time to file an amended Petition and Respondents Sleepy Hollow and GM would have time to serve their answers or responding papers to the amended Petition. *See* Exhibit F to Amended Petition. This 2007 Article 78 proceeding is being discontinued by Petitioner Tarrytown as a result of the pendency of the instant Article 78 proceeding.

135. In December 2007, Respondent GM commenced its own Article 78 proceeding against Respondent Sleepy Hollow. In *General Motors Corporation v. The Village of Sleepy Hollow*, (West. Cty. Index No. 2398/07), Respondent General Motors challenged nine conditions set forth in the June 24, 2007 Findings Statement. On December 31, 2009, the Westchester County Supreme Court (Hubert J.) issued a Decision, Order and Judgment in the Article 78 proceeding brought by Respondent GM, which granted in part and denied in part the relief requested by Respondent GM in regard to the nine conditions in the Findings Statement challenged by Respondent GM. A copy of the December 31, 2009 Decision, Order and Judgment of Justice Hubert is annexed herein as Exhibit A. This 2007 Article 78 proceeding is being discontinued by Petitioner Tarrytown as a result of the pendency of the instant Article 78 proceeding.

136. In September 2008, Respondent GM commenced a second Article 78 proceeding against the Respondent Sleepy Hollow entitled *General Motors Corporation v. The Village of Sleepy Hollow, et al.* (West. Cty. Index No. 20497/08). In such Article 78 proceeding, Respondent GM sought an Order of mandamus directing Respondent Sleepy Hollow to approve a Riverfront Concept Development Plan and grant a special permit to Respondent GM so that redevelopment of the GM site could proceed. On June 4, 2010, the Westchester County Supreme Court (Hubert J.) directed that Respondent Sleepy Hollow proceed to act

on the GM special permit application and Riverfront Concept Development Plan. A copy of the June 4, 2010 Decision, Order and Judgment of Justice Hubert is annexed herein as Exhibit B.

137. A revised Riverfront Development Concept Plan was presented to Respondent Sleepy Hollow on December 14, 2010. (CROP, Vol. 13). The major elements of the revised Riverfront Development Concept Plan were as follows:

- 1,177 condominium, apartment and townhouse residences, of which the apartments will include 40 affordable senior units and 21 affordable Village workforce units;
- Non-residential uses consisting of approximately 132,000 square feet of retail space (including $\pm 35,000$ square foot market, 18,000-square foot cinema; a $\pm 89,000$ square feet of shops and restaurants); $\pm 35,000$ square feet of office space; a 140-room hotel with meeting space and a $\pm 5,000$ square foot restaurant; and the potential for an additional 6,000 square feet of retail/restaurant space along Road A;
- The Village Green, the Waterfront Park and improvements (including any required repairs to the existing riprap shoreline), the Expanded Buffer Area (including an emergency access to Kingsland Point Park), and the Central Park, totaling approximately 16.1 acres of public open space, to be constructed by GM's designated developer and dedicated to the Village following its acceptance of same;
- Approximately 28.7 acres of land to be donated by GM to the Village for public use, consisting of 28.3 acres on the East Parcel and 0.4 acres on the South Parcel;
- Roads and utilities within roads on the West Parcel to be constructed by GM's designated developer and dedicated to the Village following its acceptance of same; and
- The reconstruction or upgrade of the Beekman Avenue Bridge to a minimum HS 25 structural standard by GM's designated developer.

138. In conjunction with the presentation of the Revised Concept Plan and pursuant to Respondent GM's and Respondent Sleepy Hollow's obligations under SEQRA, Respondent GM presented a December 14, 2010 "Environmental Assessment Narrative" to Respondent Sleepy Hollow. (CROP, Vol. 12, No. 1).

139. As set forth therein, the Environmental Assessment Narrative and accompanying drawings illustrate the changes to the Lighthouse Landing Riverfront Development Concept Plan conforming to certain requirements set forth in the July 24, 2007 SEQRA Findings Statement issued by Respondent Sleepy Hollow, the modifications required by Justice Hubert's December 31, 2008 Decision, Order and Judgment as well as recent discussions between Respondent Sleepy Hollow and Respondent GM.

140. Copies of the Environmental Assessment Narrative along with the conceptual site plans were transmitted to all involved and interested agencies, including the Petitioner Village of Tarrytown, on or about December 20, 2011.

141. Petitioner Tarrytown makes the specious argument that it never received a copy of the Environmental Assessment Narrative. In this regard, that Court's attention is respectfully directed to the accompanying affidavit of Anthony Giaccio, Village Administrator of Respondent Sleepy Hollow, sworn to on the 9th day of September 2011.

142. Subsequent to the circulation of the Environmental Assessment Narrative, written comments were submitted to Respondent Sleepy Hollow from a number of interested and involved agencies, including New York State Department of Transportation, New York State Office of General Services, Westchester County Planning Department, New York State Department of Environmental Conservation, and Village of Sleepy Hollow Waterfront Advisory Commission.

143. On January 25, 2011, Respondent Sleepy Hollow held a public discussion in order to discuss the content of the Environmental Assessment Narrative and also review the comments received from involved and interested agencies on the Environmental

Assessment Narrative. After the close of the public discussion, the Respondent Sleepy Hollow unanimously adopted a resolution entitled “Resolution on Environmental Determination and Findings, Revised Riverfront Development Concept Plan pursuant to Section 62-5.1 of the Sleepy Hollow Code for the Lighthouse Landing Riverfront Development.” (CROP, Vol. 12, No. 14).

144. Said resolution, after detailing the history of the project and the changes in the Riverfront Development Concept Plan made in order to comply with the June 24, 2007 Findings Statement, Justice Hubert’s December 31, 2009 Decision, Order and Judgment and discussions between Respondent Village and Respondent GM, indicated that the information and procedural requirements of SEQRA applicable to the revised Riverfront Development Concept Plan had been met and Respondent Sleepy Hollow had taken a hard look at the potential, adverse, environmental impacts of the project described in the revised Riverfront Development Concept Plan when compared to the potential, adverse impacts of the Riverfront Development Concept Plan which was the subject of the July 24, 2007 Findings Statement.

145. Said January 25, 2011 resolution then proceeded to make a number of detailed findings and determinations pursuant to the requirement of SEQRA. (*See* pp. 7-10). Further, said resolution indicated that the proposed revisions to the Riverfront Development Concept Plan is described in the Environmental Assessment Narrative “do not present significant adverse, environmental impacts not addressed or inadequately addressed in the DEIS and FEIS and that there are no change in circumstances or newly discovered information presenting such potential impacts.” The resolution concludes with Respondent

Sleepy Hollow making the required SEQRA Findings as set forth in 6 NYCRR Part 617.7 and 617.11.

146. Subsequent to the adoption of the January 25, 2011 resolution (CROP, Vol. 12, No. 14), Respondent Sleepy Hollow received a letter from Petitioner Tarrytown's traffic consultant objecting to those portions of the January 25, 2011 resolution which, in Petitioner Tarrytown's opinion, did not adequately address traffic issues in the Village of Tarrytown. (CROP, Vol. 12, No. 18).

147. After the adoption of the January 25, 2011 resolution, the Respondent Sleepy Hollow at public meetings held on February 8, 15 and 22, March 8 and 22, and April 12, 2011, continued discussion of the revised Riverfront Development Concept Plan and the various environmental issues which had been the subject of the SEQRA review process. At these public meetings, there was also discussion of draft terms to be included in a special permit to possibly be issued by the Respondent Sleepy Hollow to Respondent GM at some future date.

148. On April 12, 2011, Respondent Sleepy Hollow indicated that it would hold a public hearing on June 7, 2011 in regard to Respondent GM's application for approval of a special permit, a Riverfront Development Concept Plan, Consistency Findings under Sleepy Hollow's Local Waterfront Revitalization Plan as well as Design Guidelines for the project. (CROP, Vol. 12, No. 23).

149. On June 7, 2011, a public hearing on the aforesaid applications was held before the Respondent Sleepy Hollow. At such hearing, Respondent Sleepy Hollow heard comments and received written statements from members of the public, including residents

of Sleepy Hollow and Tarrytown and a representative of a public interest organization. Comments on the various applications were also made by an attorney representing Petitioner Tarrytown, and a further letter was submitted by Petitioner Tarrytown's traffic consultant. (CROP, Vol. 12, No. 39).

150. After the close of the June 7, 2011 public hearings, Respondent Sleepy Hollow moved and unanimously adopted the following resolutions:

- a. Granting a special permit and approving the Riverfront Development Concept Plan for the Lighthouse Landing Riverfront Development. (CROP, Vol. 12, No. 24).
- b. Issuing Consistency Findings for the Lighthouse Landing Riverfront Development. (CROP, Vol. 12, No. 25).
- c. Approving design guidelines for Lighthouse Landing Riverfront Development. (CROP, Vol. 12, No. 26).

151. The resolutions adopted by Respondent Sleepy Hollow on June 7, 2011 were the culmination of nine years of extensive studies, reports, public meetings, public comments and public hearings which reviewed in depth all potential environmental and land use impacts of the proposed Lighthouse Landing project. Clearly and as required by law, Respondent Sleepy Hollow acting through its Boards and Commissions, as well as through its various consultants, carefully reviewed and analyzed all submissions by Respondent GM as well as all comments by public agencies, public interest organizations and private residents. Since the Petitioner Tarrytown is an immediate neighbor of Respondent Sleepy Hollow to the south, Respondent Sleepy Hollow at all times has been exceedingly mindful of

the concerns of the Village of Tarrytown from the very inception of the application by GM in 2003 until the present.

152. As a result of the adoption of the June 7, 2011 resolutions, the Court now has before it a revised Riverfront Development Concept Plan which constitutes a drastic modification from the Riverfront Development Concept Plan originally submitted by Respondent GM to Respondent Sleepy Hollow in 2003. The Revised Riverfront Concept Plan evolved over time in response to concerns raised by Respondent Sleepy Hollow officials and residents, by Petitioner Tarrytown officials and residents, by public agencies and by public interest organizations. The Concept Plan approved on June 7, 2011 complies with all lawful requirements, and mitigates the potential adverse impacts of the Lighthouse Landing Riverfront Development to the maximum extent practicable.

153. Submitted herein for the Court's review and consideration is the Certified Record of Proceedings for the Lighthouse Landing project which culminated in the June 7, 2011 approval of Respondent GM's revised Riverfront Development Concept Plan, the issuance of a special permit to Respondent GM, the approval of Consistency Findings and Design Guidelines.

154. Said Certified Record of Proceedings consists of the following:

Volume 1 – All documents in the Village files commencing with the filing of the application by Roseland in February, 2003 and continuing through January 2005 when the Roseland DEIS was accepted by Respondent Sleepy Hollow;

Volumes 2, 3 and 4 – The DEIS, including appendices, which was accepted by Respondent Sleepy Hollow as Lead Agency in January 2005;

Volumes 5, 6, 7, 8 – The FEIS, including appendices, which were accepted by Respondent Sleepy Hollow as Lead Agency on December 19, 2006;

Volume 9 – All documents in the Village files from December 19, 2006 to July 24, 2007 (the date the Environmental Findings Statement was adopted by Respondent Sleepy Hollow);

Volume 10 – All documents in the Village files from July 24, 2007 until September 19, 2008;

Volumes 11A and 11B – Minutes of all meetings of Respondent Sleepy Hollow, Planning Board and other Village Boards, which discussed the Lighthouse Landing proposal between February 2003 and September 2008;

Volume 12. All documents in the Respondent Sleepy Hollow files from September 20, 2008 to June 7, 2011; and

Volume 13. Various Riverfront Development Concept Plans, other plans and drawings submitted to the Village of Sleepy Hollow between December 16, 2010 and June 7, 2011.

155. A review of the Certified Record of Proceedings demonstrates that the determinations made by Respondent Sleepy Hollow on July 24, 2007, January 25, 2011 and June 7, 2011 were lawful and proper in all respects, had a rational basis and were not arbitrary and capricious.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

156. The allegation by Tarrytown that it did not receive the Environmental Assessment Narrative dated December 16, 2011 is belied by the Public Record and the affidavits of Anthony Giaccio and Owen Wells; both sworn to on September 16, 2011 and attached hereto.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

157. There was no basis for Respondent Sleepy Hollow to require Respondent GM to prepare a Supplemental Environmental Impact Statement in conjunction with the Revised Riverfront Development Concept Plan.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

158. The Certified Record of Proceedings demonstrates that Respondent Sleepy Hollow did consider all the reasonable alternatives in regard to possible traffic mitigation in Petitioner Tarrytown and the conditions imposed by Respondent Sleepy Hollow upon Respondent GM adequately mitigate the alleged traffic impacts of the Revised Riverfront Development Concept Plan on Petitioner Tarrytown.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

159. The purported Findings Statement issued by Petitioner Tarrytown in September 2007 as well as the purported Supplemental Findings Statement issued by Tarrytown in May 2011 were issued in violation of SEQRA, have no basis in law or fact and should be regarded as a nullity by this Court.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

160. Petitioner Tarrytown was originally listed as an “interested agency” during the SEQRA process.

161. Thereafter, Petitioner Tarrytown requested that it be listed as an “Involved Agency”.

162. Although the Petitioner Tarrytown was eventually listed as an “Involved Agency”, it does not meet the criteria of an “Involved Agency” pursuant to SEQRA.

163. As a result, the Petitioner Tarrytown had no authority pursuant to SEQRA to issue any purported SEQRA Findings Statement.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

164. Respondent Sleepy Hollow made rational determinations pursuant to SEQRA for the Lighthouse Landing Project which were not arbitrary or capricious and which was fully supported by the evidence of the Record.

165. Respondent Sleepy Hollow has fully complied in all respects with the procedural and substantive requirements of SEQRA.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

166. Respondent Sleepy Hollow’s approval of General Motor’s application for a special permit, approval of the Revised Riverfront Development Concept Plan and adoption of Consistency Findings pursuant to the Local Waterfront Revitalization Program (“LWRP”) fully complied with the procedural and substantive requirements of the laws and ordinances of the Village of Sleepy Hollow, County of Westchester and State of New York, was consistent with the Village of Sleepy Hollow Comprehensive Plan and was lawful and proper in all respects.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

167. Petitioner has not suffered an injury in fact from Respondent Sleepy Hollow's determinations which are different in degree or kind from any purported injury to the community in general.

168. Petitioners are not within the zone of interests intended to be protected by SEQRA.

169. The instant proceeding is not brought for a legitimate or valid purpose under SEQRA, but has been brought by Petitioner Tarrytown solely because of the economic self-interest of certain businesses within the Village of Tarrytown.

170. Any injury which Petitioner Tarrytown may allegedly suffer is solely economic and not environmental, and is, accordingly, beyond the scope of the interests intended to be protected by SEQRA.

WHEREFORE, Respondent Sleepy Hollow requests that the Amended Petition of Tarrytown should be dismissed, and the Court award Respondent Sleepy Hollow costs and disbursements, attorney's fees and damages against Petitioner Tarrytown.

Dated: White Plains, New York
September 16, 2011

KEANE & BEANE, P.C.

By: _____
Joel H. Sachs
Attorneys for Respondents Mayor and Board of
Trustees of the Village of Sleepy Hollow
445 Hamilton Avenue, 15th Floor
White Plains, New York 10601
(914) 946-4777

TO: Silverberg & Zalantis
Attorneys for Petitioners
220 Tarrytown Road
Tarrytown, New York 10591

Cuddy & Feder
Attorneys for General Motors a/k/a General Motors, LLC
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601

Index No. 11630/11

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

MAYOR AND BOARD OF TRUSTEES OF
THE VILLAGE OF TARRYTOWN and the
VILLAGE OF TARRYTOWN,

Petitioners,

-against-

MAYOR AND BOARD OF TRUSTEES OF
THE VILLAGE OF SLEEPY HOLLOW and
GENERAL MOTORS LLC a/k/a GENERAL
MOTORS COMPANY, LLC,

Respondents.

**VERIFIED ANSWER OF RESPONDENT MAYOR
AND BOARD OF TRUSTEES OF THE VILLAGE OF
SLEEPY HOLLOW WITH EXHIBITS**

Law Offices of
KEANE & BEANE, P.C.
445 Hamilton Avenue
15th Floor
White Plains, New York 10601
914-946-4777

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Notary Public